The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF WASHINGTON

SKYE TAYLOR, Plaintiff, vs. VOLKSWAGEN GROUP OF AMERICA INC., et al. Defendants.	CASE NO. C07-1849RSL **- SECOND AMENDED COMPLAINT -** **COMPLAINT FOR VIOLATIONS OF THE SHERMAN ANTITRUST ACT**

SUMMARY OF COMPLAINT:

1. Plaintiff, Skye Taylor, brings this action for damages and injunctive relief against Defendants for the injuries Plaintiff sustained by way of Defendants' antitrust violations of Section 1 of the Sherman Act, 15 U.S.C § 1 *et seq*., as alleged herein.

2. Since 1992, Defendants have conspired among themselves, and have designed and implemented two unreasonable antitrust vertical restraints in order to eliminate intrabrand competition and suppress interbrand competition, between US-Canada cross-border dealers.

3. The Defendants' vertical restraints serve to restrain trade, restrain interbrand competition, and to, price fix, inflate, maintain, or stabilize the dealer invoice, and therefore retail price of new Volkswagen vehicles and interbrand vehicles in competition with the Volkswagen vehicles, sold in both the United States and in Canada.

4. The Defendants' vertical restraints, combination and conspiracy, allowed Defendants to price their new vehicles differently between the US-Canada markets as well as engage in currency exchange rate profiteering. Higher prices, exchange rate profiteering, and less competition, meant higher profits to the detriment of each and every purchaser of a new Volkswagen vehicle or new interbrand vehicle in competition with the Volkswagen vehicles.

5. During the time covered by this Complaint, the price discrimination between the two markets (US-Canada) changed back and forth presenting buying opportunities in both markets, and on November 7th, 2007 made it possible for the Plaintiff to cross the border and purchase the cheaper priced Volkswagen vehicles at a savings of approximately 30%. However, because of the vertical restraints to eliminate exports, the Plaintiff was ultimately refused to purchase a 2008 Jetta, forcing the Plaintiff to pay unreasonably, artificially manipulated higher prices in a non-competitive market.

6. These manipulated higher prices on both sides of the border are a result of the Defendants' antitrust violations, and are injuries the Plaintiff and Consumers of new vehicles have suffered.

7. 15 U.S.C. § 1 of the Sherman Act states, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

JURISDICTION AND VENUE:

8. This Court has jurisdiction over this action pursuant to 15 U.S.C §§1 and 28 U.S.C. §§1331, 1337, 1343(a), 1391.

9. Venue is proper in this district pursuant to 28 U.S.C. §1391 as the unlawful acts described in this Complaint were carried on, in part, within this district.

PARTIES TO THIS COMPLAINT:

10. **Plaintiff:**

a. Plaintiff, Skye Taylor resides in Vancouver, British Columbia, Canada.

11. **Defendants:**

a. Defendant, VOLKSWAGEN GROUP OF AMERICA INC., (Hereafter "VWoA"), is a corporation organized under the laws of New Jersey, with it's principle place of business at 3800 Hamlin Road, Auburn Hills, Michigan, 48326;

b. Defendant, CASCADE CHRYSLER INC., dba and hereafter "Karmart Volkswagen", is a Volkswagen dealership located at 1725 Bouslog Road, Burlington, WA 98233;

c. Defendant, HANSON MOTORS INC., dba and hereafter "Hanson Volkswagen", is a Volkswagen dealership located at 2300 Carriage Loop SW, Olympia, WA 98502, and

d. Defendant, ROGER JOBS MOTORS INC., dba and hereafter "Roger Jobs Volkswagen", is a Volkswagen dealership located at 2200 Iowa St., Bellingham, WA 98229.

12. Karmart Volkswagen, Hanson Volkswagen, and Roger Jobs Volkswagen, referred to as [the "dealers" or "dealerships"], are independent VWoA authorized dealers located in the State of

Washington. Each have a dealer sales and service agreement with VWoA to operate Volkswagen dealerships and sell new Volkswagen brand vehicles to the final consumer (consumers).

TRADE AND COMMERCE:

13. During the period of time covered by this Complaint, the Defendants distributed, and sold new vehicles to consumers in a continuous uninterrupted flow in interstate commerce and trade.

14. The Defendants' business policies and practices that are the subject of this Complaint were within the flow of, and substantially affected, interstate commerce and trade.

GENERAL FACTUAL BACKGROUND:

15. Volkswagen AG is the fourth largest auto-manufacturer in the world and the largest in Europe, its major subsidiaries include well-known car brands like Audi, Bentley, Bugatti, Lamborghini, SEAT, Škoda, and the brand Volkswagen itself.

16. To distribute and promote the new Volkswagen brand vehicles including Jetta, Beetle, Passat and Rabbit etc. to the Canadian and American markets, Volkswagen AG set up and incorporated two wholly owned subsidiaries, Volkswagen Canada Inc. (Hereafter "VWoC"), and VWoA.

17. VWoA distributes Volkswagen brand vehicles to a network of independent authorized Volkswagen dealers within the United States, and VWoC distributes to a network of independent authorized Volkswagen dealers within Canada.

18. Safety and environmental regulations in both the US and Canada governing the sale of new vehicles are approximately the same. So, Volkswagen vehicles manufactured for sale in the US and Canada are substantially identical, with little to no modifications required.

19. Consequently, VWoA and VWoC distribute basically the same identical new vehicles to their dealers for wholesale or what is referred to as the "dealer invoice". Their dealers in turn, re-sell the new vehicles in accordance with the terms of their Volkswagen Automobile Dealer Sales and Service Agreement to the final consumer. The difference between the dealer invoice and the MSRP (retail price) is usually the dealer's potential profit margin. It's important to note that the destination charge as well as local taxes and fees are not included in the dealer invoice price or the MSRP – this is done so no matter where a dealer is located, they can advertise and sell at the exact same price, allowing all dealers the ability to compete with each other. [Emphasis added]

20. In 1989, the U.S.-Canada Free Trade Agreement (FTA) went into effect, *to eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services*. One of the key objectives was *to promote conditions of fair competition in the free trade area*. As a result of the FTA and later NAFTA in 1994, it became easier and more cost efficient to purchase high cost goods, such as new vehicles, between the parties to that agreement.

21. As a result, Volkswagen dealers, as well as, all other automotive dealers were increasingly confronted with cross-border shoppers. The cross-border competition threatened dealer profits and their business existence on both sides of the border, because they couldn't compete on price.

22. The inability for dealers on each side of the US-Canada border to compete with each other was a direct result of the discrimination in dealer invoice pricing. Dealers just across the border from each other paid different prices for substantially identical vehicles. Although local

taxes and fees including the destination charge was kept out of the dealer invoice pricing, manufacturers and / or distributors had created a different price for each of the two markets (US and Canada). And without the *law of one price*, competition between the dealers would be made impossible.

23. This discrimination in dealer invoice pricing was further compounded because major auto-manufacturers and/or distributors were not allowing cross-border dealers to purchase in the same currency, nor were they adjusting the dealer invoice pricing during the year to reflect the fluctuations between the US-CAD currency exchange rates.

24. Historically, dealer invoice pricing is determined annually and applied nationally, and by not adjusting the prices to reflect the changing currency exchange rates, manufacturers, and/or distributors were able to profit from the spread between the two currencies. For example, lets say a distributor buys in Euros but sells in US$. The distributor sets the dealer invoice price at US$20,000 however after a couple months the dollar strengthens by 20% bringing the price down to US$16,000. In order to keep the spread the distributor ignores the new exchange rates and keeps charging US$20,000.

25. With the difference between the manufacturers' and or distributors' dealer invoice pricing between the US-Canada markets, and the compounded manufacturers' and or distributors' exchange rate profiteering, dealer invoice price discrimination fluctuated to drastic levels making competition between cross border dealers dangerous. For example, if cross-border shoppers were to increase because of the Free Trade Agreement or NAFTA, the dealer being charged higher dealer invoice prices could see all of its business disappear overnight, forcing the dealer out of business.

26. Beginning in approximately the 1990's, all major vehicle manufactures, sellers, and/or distributors took various measures that stopped the effects of any past or present US-Canada trade

agreement that allowed the free flow of new vehicles across the US-Canada border. For example, in 1992 VWoA and their dealers went into a written agreement that eliminated the export of all new Volkswagen vehicles from the 50 United States. Relevant part from that agreement (Unreasonable antitrust vertical restraint #1):

> *…VWoA does not restrict Dealer's sale of Authorized Products within the 50 United States. VWoA hereby informs Dealer, however, that VWoA has no authority to sell any products for distribution outside the United States, and it is VWoA's policy not to do so. Dealer acknowledges its understanding that this is intended to preserve the integrity of the orderly worldwide distribution network for the products supplied to VWoA, and to maximize customer satisfaction by ensuring that Authorized Products meet the certification and operational standards to which they were designed. Dealer therefore is authorized to sell new Authorized Products only in the 50 United States, and is not authorized to, and agrees it will not, sell any new Authorized Product for sale or use elsewhere.*

27. VWoC and their dealers have a similar written agreement that prevents Canadian dealers from exporting new Volkswagen vehicles. (A signed letter issued by VWoA on VWoC's letterhead states the restriction: *Volkswagen has a restriction in the dealer franchise agreement that prevents dealers from selling vehicles to Canadian residence…. The same restriction applies to U.S. residents purchasing vehicles from Canadian dealers…)*

28. These agreements on both sides of the US-Canada border to stop the export of new Volkswagen vehicles were exercised by the dealers. They set up a policy and practice within their dealerships to restrain "passive sales". (Antitrust vertical restraint #2) "Passive Sales" are sales to the final consumer or their intermediaries made by a dealership in response to unsolicited orders

from outside their allocated sales territory (For this case, the territories being either the US or Canada).

29. As a result of this passive sales restraint policy, American Volkswagen dealerships would no longer sell to consumers who ultimately wanted to export and use the vehicles in Canada, and the Canadian Volkswagen dealerships would no longer sell to consumers who wanted to export and use the vehicles in America. The policy was based on "use", so even an American citizen living in Canada would no longer be able to purchase a new vehicle in the United States if they planned to "use" the vehicle in Canada.

30. Profit driven dealers eagerly participated in exercising the passive sales restraints, as dealers believed that they were the impetus for the restraints, and by doing so, they would protect themselves, as their counterparts (Volkswagen dealers and interbrand dealers) cross-border would do the same in return. The dealers' primary purpose and effect of enforcing the restraints was to keep prices high and protect themselves horizontally from cross-border intrabrand as well as interbrand competition.

31. And for the dealers that would derail from the agreement, VWoA and VWoC as well as interbrand manufactures took various measures, for example: threatening to terminate the dealers' dealership(s) among others.

32. And as a result of the enforcement of the vertical restraints to eliminate exports, all parties profited. The dealers profited as a result of higher prices and less competition. VWoA, VWoC as well as interbrand manufacturers profited, both from the ability to maintain higher prices between the two markets, and also from the fluctuating currency exchange rate spread.

33. For example: when the fluctuations in the currency market provided for the opportunity, such as between 1999-2003, when the Canadian dollar averaged more than 152 cents to the US dollar, all major manufacturers and or distributors were profiting more from the exchange rate spread, than the dealers could profit if they sold every vehicle at full MSRP. The difference was so large that the U.S. dealer invoice was higher than the Canadian dealer MSRP. For example:

2002 Pricing (All in US$ - 2002 average rate used for exchange: x-rates.com)				
United States Auto Manufactures/Distributors	**Top Vehicle**	**American MSRP**	**Canadian MSRP**	**American Dealer Invoice**
General Motors Corp.	Silverado	US$18,108	US$14,496	US$16,388
Toyota Motor Sales USA Inc.	Camry	US$18,970	US$15,127	US$16,976
Ford Motor Company	F-Series	US$18,540	US$14,232	US$16,439
Chrysler LLC	Ram	US$17,620	US$14,808	US$15,733
American Honda Motor Co Inc.	Accord	US$18,890	US$14,646	US$17,005
Nissan North America Inc.	Altima	US$18,499	US$14,963	US$17,011
Volkswagen of America Inc.	Jetta	US$16,850	US$13,818	US$15,364
Source: MSN Autos & Sanford Evans Gold Book			**Compare Difference**	

- The American dealer invoice price for a Volkswagen Jetta was $1,546 more than the Canadian MSRP.
- The American dealer invoice price for a Honda Accord was $2,359 more than the Canadian MSRP.
- The average American dealer profit in the chart above when vehicles are sold at full MSRP is 9.84% of the MSRP.
- The average difference between the US / Canada MSRP is 19.85%. This is more than double what the US dealers can profit when selling at full MSRP, and the percentage that American consumers were over paying for their new vehicles.

34. Similarly, on November 7, 2007 when the Plaintiff attempted to purchase a 2008 Jetta, the Canadian dollar was trading below 93 cents to the US dollar. Because of this, auto-manufactures and / or distributors could obtain a much larger exchange rate profit spread. For example:

2008 Pricing (All in US$)* vehicle series are same but not to be compared with 2002 as some models have changed					
United States Auto Manufactures / Distributors	Top Vehicle	American MSRP	Canadian MSRP	American Dealer Invoice	Canadian Dealer Invoice
General Motors Corp.	Silverado	US$17,500	US$25,649	US$16,538	US$22,666
Toyota Motor Sales USA Inc.	Camry	US$18,570	US$28,244	US$16,989	US$25,692
Ford Motor Company	F-Series	US$17,520	US$24,208	US$16,475	US$22,093
Chrysler LLC	Ram	US$21,215	US$29,438	US$18,925	US$27,431
American Honda Motor Co Inc.	Accord	US$20,360	US$27,361	US$18,458	US$25,452
Nissan North America Inc.	Altima	US$20,180	US$26,715	US$18,924	US$24,466
Volkswagen of America Inc.	Jetta	US$16,990	US$23,964	US$16,190	US$22,084
Source: MSN Autos, Sanford Evans Gold Book, carcostcanada.com, x-rates.com				**Compare Difference**	

- The Toyota Camry Canadian dealer invoice was US$7,122 more expensive than what American dealers were selling for at full American MSRP.
- The Volkswagen Jetta dealer invoice price difference was $5,894 for each Jetta sold – this is over 7 times what an American dealer would profit when selling a Jetta at the full MSRP.
- If an American dealer sold a Jetta at full MSRP their profit would be US$800.
- If a Canadian dealer sold a Jetta at full MSRP their profit would be US$1,885 (higher prices = higher profits).
- The average difference between the American / Canadian MSRP is 28.7%, which is the percentage that Canadian consumers were over paying for their new vehicles in Canada.

35. This success profiteering such large amounts was possible in part because all major vehicle manufactures, distributors and/or sellers had similar policies to restrain cross-border sales. This following chart represents auto-manufacturers and or distributors that use vertical restraints upon their dealers to eliminate new vehicle exports. (Note that this list does not include the many smaller manufacturers with less than 1% of the market share):

Top Auto Manufacturers (2007 US SALES)	Market Share	Restraints
General Motors Corp.	23.4%	YES
Toyota Motor Sales USA Inc.	15.5%	YES
Ford Motor Company	14.9%	YES
Chrysler LLC	14.1%	YES
American Honda Motor Co Inc.	9.0%	YES
Nissan North America Inc.	7.2%	YES
Volkswagen of America Inc.	2.7%	YES
Hyundai Motor America	2.7%	YES
BMW of North America Inc.	1.8%	YES
Mazda Motor of America Inc.	1.8%	YES
Mercedes-Benz	1.5%	YES
TOTAL COMBINED MARKET SHARE:	94.6%	
Source: Autodata Corp. (Manufacturers with 1% of market share or more)		

36. The primary purpose and effect of the vertical restraints by the manufacturers and or distributors upon their dealers was to raise and maintain prices. The restraints are effective because all major manufacturers use them to stop exports. If even VWoA opted out from the industry norm of restraining exports, prices for all similar interbrand vehicles between the two markets (US/CAD) would fall to a competitive level.

37. For example: If a Canadian consumer was generally indifferent between the following three vehicles:

All in US$ (Plaintiff's Nov 7-07 FX)	American Dealer Invoice	Canadian Dealer Invoice	American MSRP	Canadian MSRP
2008 Honda Civic Sedan LX 5MT	US$15,616	US$21,282	US$16,960	US$22,884
2008 Toyota Corolla Sedan LE	US$14,855	US$22,057	US$16,415	US$23,887
2008 Volkswagen Jetta Sedan 2.5L	US$16,190	US$22,084	US$16,990	US$23,969
Source: MSN Autos, Sanford Evans Gold Book, carcostcanada.com, x-rates.com				

And if the above three manufacturers and or distributors used restraints and forced the consumer to purchase the vehicle in Canada at an average price of US$23,580, the consumer would base their decision unrelated to price. But lets say Volkswagen allowed the consumer to cross the border and purchase a Jetta at $16,990, the Canadian consumer indifferent between the three vehicles would most certainly cross the border and buy in the United States to receive the 27.94% savings. Honda and Toyota would then be compelled to allow Canadian consumers to cross the border to purchase, or lower prices in Canada. Otherwise they will lose sales to Volkswagen. However since Volkswagen restraints the export of their vehicles, the consumer is forced to pay an average of US$6,792 more for the vehicle in Canada.

38. Volkswagen is willing to sell its Jetta for a dealer invoice of US$16,190. Presumably this price provides a reasonable profit margin, or Volkswagen would discontinue the line or not distribute it into the United States. It would be in Volkswagen's interest to allow their American dealers to sell to Canadian dealers because Volkswagen would take away potential customers away from Honda and Toyota. However, Volkswagen also understands that it is profitable for Honda and Toyota to sell at approximately $15,553 and since the other manufacturers also have an incentive to restraint passive sales, Volkswagen understands that this prisoner's dilemma or Nash equilibriums effect will payoff and therefore continues to restraint the export of their new vehicles.

39. And as such, VWoA's actions eliminate all intrabrand cross-border competition as well as suppresses the over all interbrand competition from cross border dealers.

40. Absent the Defendants' alleged constraints; an American or Canadian citizen residing in the United States should be able to buy a new car directly from a Canadian Volkswagen dealership or competing interbrand dealership and export it for use in the United States; And an American or Canadian citizen residing in Canada should be able to buy a new vehicle directly from a United States Volkswagen dealership or competing interbrand dealership and export it for use in Canada; and also new Volkswagen vehicle prices and new interbrand vehicle prices to consumers should be lower in both the United States and Canada.

PLAINTIFF'S FACTUAL BACKGROUND:

41. At the time of the events relevant to this case, Plaintiff Skye Taylor was a resident of Vancouver, Canada.

42. Since on or about October 5th, 2007, Plaintiff attempted to purchase two new Volkswagen vehicles, a 2008 Passat and a 2008 Jetta, from Defendant Dealers while in Washington.

43. By buying the two Volkswagen vehicles and exporting them to Canada for use, the savings as describe herein would be over US$17,000.00 (Approximately 30%).

44. Defendant, Roger Jobs Volkswagen refused to sell Plaintiff new vehicles in Bellingham, Washington because of their passive sales restraint policy and agreement with Defendant VWoA.

45. Defendant, Karmart Volkswagen refused to sell Plaintiff new vehicles in Burlington, Washington because of their passive sales restraint policy and agreement with Defendant VWoA.

46. Defendant, Hanson Volkswagen sold the Plaintiff a 2008 Passat in Olympia, Washington, however when Plaintiff came back to purchase a 2008 Jetta, Hanson Volkswagen refused to sell Plaintiff the vehicle because of their passive sales restraint policy and agreement with Defendant VWoA.

47. Plaintiff is currently being forced to wait till the outcome of this case to be allowed to purchase a new 2008 Jetta (soon to be 2009) from a US dealer.

48. Absent the Defendants' alleged constraints, Plaintiff should have been able to buy the Passat from the closest Washington dealer to his home, Roger Jobs Volkswagen, or from any American Volkswagen dealer or Canadian Volkswagen dealer for the same base price. Also, absent the alleged constraints, Plaintiff wouldn't have to wait to purchase the 2008 Jetta.

<u>INJURY AND THREATENED INJURY:</u>

49. During the period covered by this Complaint, the Plaintiff was denied the right to purchase a new vehicle from each of the Defendants' dealerships. Also each and every purchaser of a new Volkswagen vehicle or new interbrand vehicle in both the United States and in Canada, paid unreasonably, artificially manipulated higher prices for their new vehicles than would exist absent the Defendants' conduct and conspiracy. These manipulated higher prices on both sides of the border are a result of the Defendants' antitrust violations, and are the injuries suffered. Note that the injury amount is not calculated between the differences of the MSRP, but instead the price difference between the dealer invoices, and also the currency exchange rate spread. A combination of these two amounts provides an accurate amount of injury: ("a" with "b" = total)

a. The price discrimination between the US/Canada [original] dealer invoices. (For example: if a dealer invoice in the United States is originally set at US$16,190 and in

Canada it's originally set at US$22,084 then the injury portion is US$5,894.) This price discrimination is the profit from intentional price fixing. Even if the currency exchange rate fluctuates and the difference gets smaller it doesn't change this injury amount. In such a situation, it adjusts the profit gained from the second component to the scheme as outline below in 'b'. (Absent the Defendants' restraints there would be only one dealer invoice price for Volkswagen vehicles and for interbrand vehicles competing with Volkswagen vehicles, as they would have to follow suit or not be able to compete with the Volkswagen brand.) And;

b. The exchange rate spread. This is unlike the profit described above in 'a' because this is a speculating profit. The best way to understand this portion is with the earlier example: let's say a distributor buys in Euros but sells in US$. The distributor sets the dealer invoice price at US$20,000 however after a couple months the dollar strengthens by 20% bringing the price down to US$16,000. In order to keep the spread, the manufacturer and /or distributor ignores the new exchange rates and keeps charging US$20,000. The savings of the US$4000 should have be passed onto the dealers and then to consumers but instead the original dealer invoice price is continually charged, creating an extra profit of US$4000 for each vehicle sold on top of the currency price padding hidden amount. In the reverse, if the US dollar dropped, the amount is not a loss as there is currency padding to protect such fluctuations. So it doesn't matter which dollar (US$-CA$) gets stronger, because there will always be one stronger currency which means there is always profit from the original dealer invoice and this completes the scheme, as consumers on both sides of the border pay higher prices. (Absent the Defendants' restraints, Volkswagen dealers and interbrand dealers competing with Volkswagen brand vehicles, would get dealer invoice price adjustments when purchasing throughout the year to reflect the changing currency exchange rates, or the option to pay in either currency, or the base currency.)

SALES STAFF INJURIES:

50. Defendants willfully denied their staff new vehicle sales that would have come from passive sales. This denial has interfered with their staff's basic right to a fair wage as they sometimes spend hours on these sales before being ultimately refused to sell. The time spent and commission lost is an injury the sales staff and their families have suffered. (Absent the Defendants' restraints, sales staff would be able to make passive sales and earn a fair wage for time spent.)

EXCHANGE RATES - FACTUAL:

51. From 1992 till 2002 the US dollar strengthen against the Canadian dollar. Then from 2002 till 2008 the reverse happened:

Year	USD / CAD	
1992	1.2088	US dollar strengthens 29.92% (1992–2002)
1993	1.2902	
1994	1.3659	
1995	1.3726	
1996	1.3637	
1997	1.3849	
1998	1.4836	
1999	1.4858	
2000	1.4855	
2001	1.5490	
2002	1.5705	US dollar weakens -35.92% (2002–2008)
2003	1.4012	
2004	1.3016	
2005	1.2116	
2006	1.1340	
2007	1.0740	
2008	1.0063	

Source: x-rates.com (rate = yrly avg + Jan-Apr for 2008)

EXCHANGE RATES vs. VEHICLE PRICING FACTUAL:

52. 1992 – 2008 Volkswagen Jetta MSRP Price Comparison:

*Comparison point = there is no relation between the exchange rates and new vehicle pricing

Drastic fluctuations in the currency x-rates however prices drop at the same time.

Canadian MSRP	Volkswagen Comparison	American MSRP
CA$15,620	1992 Jetta GL	US$11,540
CA$16,200	1993 Jetta GL	US$12,800
CA$17,555	1994 Jetta GL	US$13,750
CA$18,995	1995 Jetta GL	US$15,675
CA$17,650	1996 Jetta GL	US$14,250
CA$18,050	1997 Jetta GL	US$14,570
CA$18,085	1998 Jetta GL	US$14,595
CA$20,990	1999 Jetta GL	US$16,700
CA$21,170	2000 Jetta 2.0L	US$16,700
CA$21,280	2001 Jetta 2.0L	US$16,700
CA$21,700	2002 Jetta 2.0L	US$16,850
CA$24,260	2003 Jetta 2.0L	US$17,100
CA$24,520	2004 Jetta 2.0L	US$17,430
CA$24,750	2005 Jetta 2.0/2.5L	US$17,900
CA$24,975	2006 Jetta 2.5L	US$17,900
CA$23,475	2007 Jetta 2.5L	US$16,490
CA$23,475	2008 Jetta 2.5L	US$16,990

Canadian Prices:
MSRP Increase = 38.92%
CA$ Weakens = -29.92%

Total Increase = 9.93%

American Prices:
MSRP Increase = 46.01%
US$ Strengthens = 29.92%

Total Increase = 75.93%

Canadian Prices:
MSRP Increase = 15.09%
CA$ Strengthens = 35.92%

Total Increase = 51.01%

MSRP drops even though US dollar weakens 35.92% A US$5,368 difference between the US/CAD MSRP

☆ Over 6 times the profit of a US dealer ☆

American Prices:
MSRP Increase = 6.76%
US$ Weakens = -35.92%

Total Increase = -29.16%

Source: MSN Autos and Sanford Evans Gold Book

53. If the pricing of new vehicles was related to the fluctuation between the US-Canada currency exchange rates, and there wasn't exchange rate spread profiteering, then the following would have happened:

a. Between 1992-2002 – the Canadian dollar MSRP would have increased 29.92% up and beyond inflation. Instead it decreased 7.09%.

b. Between 1992-2002 – the American dollar MSRP would have decreased 29.92% after inflation. Instead it increased 7.09%.

c. Between 2002-2008 – the Canadian dollar MSRP would have decrease 35.92% after inflation. Instead it increased 8.33%.

d. Between 2002-2008 – the American dollar MSRP would have decreased 35.92% up and beyond inflation. Instead it decreased 8.33%.

54. Same chart as in ¶52, but this time all in US$, plus MSRP and percentage difference:

Year + New Vehicle	Canadian MSRP	American MSRP	Difference in MSRP	Percentage Difference
1992 Jetta GL	US$12,922	US$11,540	US$1,382	11.97%
1993 Jetta GL	US$12,556	US$12,800	US$244	1.94%
1994 Jetta GL	US$12,852	US$13,750	US$898	6.99%
1995 Jetta GL	US$13,839	US$15,675	US$1,836	13.27%
1996 Jetta GL	US$12,943	US$14,250	US$1,307	10.10%
1997 Jetta GL	US$13,033	US$14,570	US$1,537	11.79%
1998 Jetta GL	US$12,190	US$14,595	US$2,405	19.73%
1999 Jetta GL	US$14,127	US$16,700	US$2,573	18.21%
2000 Jetta 2.0L	US$14,251	US$16,700	US$2,449	17.18%
2001 Jetta 2.0L	US$13,738	US$16,700	US$2,962	21.56%
2002 Jetta 2.0L	US$13,817	US$16,850	US$3,033	21.95%
2003 Jetta 2.0L	US$17,314	US$17,100	US$214	1.25%
2004 Jetta 2.0L	US$18,838	US$17,430	US$1,408	8.08%
2005 Jetta 2.0/2.5L	US$20,428	US$17,900	US$2,528	14.12%
2006 Jetta 2.5L	US$22,024	US$17,900	US$4,124	23.04%
2007 Jetta 2.5L	US$21,858	US$16,490	US$5,368	32.55%
2008 Jetta 2.5L	US$23,328	US$16,990	US$6,338	37.30%

*All in US$ - rates from x-rates.com (rate = yrly avg + Jan-Apr for 2008)
Source: MSN Autos and Sanford Evans Gold Book

Canadian consumers would have saved the amount in 'blue' if they purchased cross border in the United States.

American consumers would have saved the amount in 'yellow' if they purchased cross border in Canada.

↑ ↑ ↑ ↑ ↑

The difference is large - compare with the 2008 US dealer profit:

US MSRP US$16,990
US Dealer Invoice - US$16,190

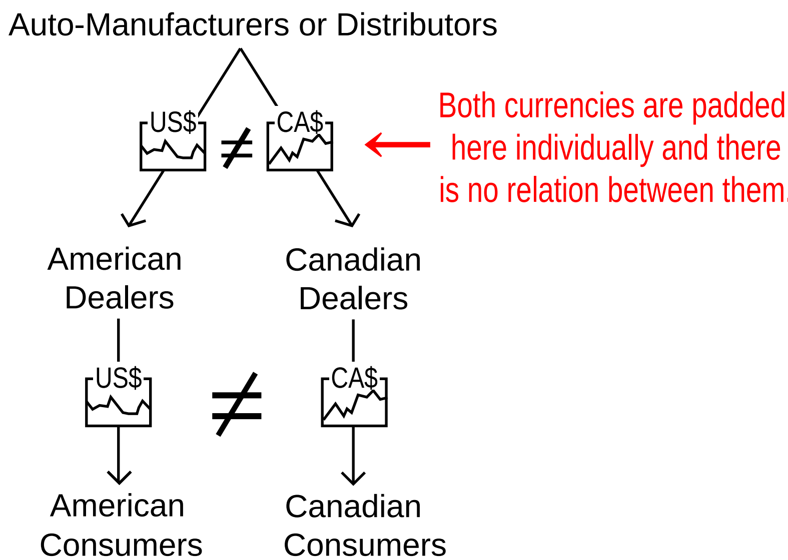
US Dealer Profit = US$800
(*only if sold for full MSRP)

55. The above chart in ¶ 54 represents that the difference between the Canadian / American MSRP is pure profit and not part of any currency price padding. For example: let's say a manufacturer can produce a vehicle for US$5,000, and in order to profit nicely and keep their stock holders happy they set a dealer invoice price of US$8,000 (US$8,000 = "stock holders satisfied price"). Now let's say that the manufacturer's cost to produce the vehicle isn't in US$ but instead is in mixed currencies. The manufacturer then estimates the maximum fluctuation percentage and adds it to the total. So instead of selling the vehicle at US$8,000 they pad the price to US$9,400 to account for future fluctuations in the currency exchange rate.

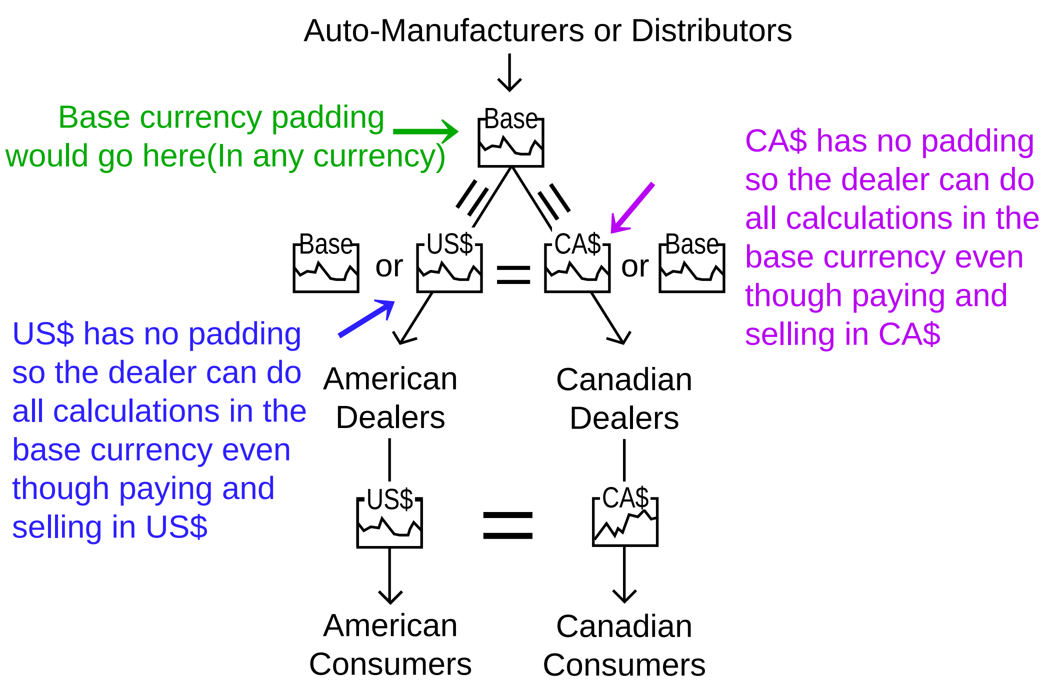
56. Looking back at the chart in ¶ 52 you can confirm that neither the American or Canadian MSRP's have changed with regards to the fluctuations in the currency exchange rate.

This can only mean that the price hasn't dropped below the "stock holders satisfied price" and therefore the fluctuations only affected the extra profit from the currency spread, either increasing the amount or decreasing it.

57. The following chart represents the current dealer invoice pricing structure (currency):



58. Here's how the currency pricing structure would look in a competitive market:



59. Not using a competitive pricing system forces an imbalance between the interests of the consumer and the manufacturers and / or distributors.

60. The Defendants' vertical restraints have had a long-term effect on the domestic economy dating back to at least 1992. The effect include among others, substantially higher prices for American and Canadian domestic consumers.

61. For example, in 2001, Defendant VWoA sold 355,648 new vehicles in the United States at an estimated average consumer expense of US$2,219 for each vehicle. This higher price for each vehicle sold in America has had a substantial effect on the US domestic economy, totaling in the upwards of US$789 million dollars in 2001 from only Volkswagen vehicles sales. (The average consumer expense was derived from taking the MSRP of Defendant VWoA's published top selling Volkswagen vehicles in the United States and in Canada and locating the average price difference, then multiplying the difference by the total vehicles sold.)

62. The effect on the domestic economy is widespread as without the Defendants' vertical restraints and conduct, interbrand dealers would not be able to artificially raise and maintain high prices at consumers' expense.

63. For example, during 2002, Honda, which is in competition with the Volkswagen brand vehicles, sold 311,159 Honda Civics in the United States at an increased MSRP difference of US$2,686 compared to the Canadian MSRP. The damage to consumers and the domestic economy just from the Honda Civic 2002 sales alone is potentially $835 million dollars. Absent the Defendants' vertical restraints, Honda would not be able to maintain such high prices at consumers' expense. This goes the same for all interbrand competition so the combined effect upon the domestic economy from the Defendants' vertical restraints and conduct is devastating, affecting

millions of new vehicle consumers annually.

SUMMARY OF VIOLATIONS:

64. Beginning at least as early as 1992, Defendants conspired, agreed and implemented policies and practices to restrain passive sales with the intent to eliminate the import and export of new vehicles in Canada and the United States, with the ultimate purpose and effect of suppressing interbrand and intrabrand competition between the two markets, as well as, to maintain new vehicle prices and profits high.

65. As described in this Complaint, the Defendants' conduct has had, and continues to have the following effect, among others:

a. Defendants' conduct has eliminated the import and export of all new Volkswagen vehicles;

b. Defendants' conduct has restricted the supply (import) and output (export) of new interbrand vehicles to artificial levels;

c. Defendants' conduct has suppressed and restrained new vehicle models not sold in other markets from being exported from the United States;

d. Defendants' conduct has suppressed and restrained new vehicle models not sold in America from being imported into the United States;

e. Defendants' conduct resulted in the elimination of competition in the market for new automobiles;

f. Defendants' conduct has suppressed and restrained price competition for new Volkswagen vehicles in both the United States and Canada;

g. Defendants' conduct has suppressed and restrained interbrand price competition for new vehicles in both the United States and Canada;

h. Defendants' conduct has artificially manipulated, increased, fixed and maintained new vehicle dealer invoice prices paid by dealers in both the United States and Canada at inflated and supra-competitive levels;

i. Defendants' conduct has artificially manipulated, increased, fixed and maintained new vehicle retail prices paid by Consumers in both the United States and Canada at inflated and supra-competitive levels;

j. Defendants' conduct has blocked what Congress intended by way of the Free Trade Agreement (FTA and later NAFTA). If Congress didn't want to *eliminate barriers to trade in* or *promote conditions of fair competition* between the United States and Canada, Congress wouldn't have entered into the free trade agreement, nor would they have removed tariffs on automobiles; and

66. Defendants' conduct has forced their sales staff and their families to suffer from commission losses. For example, the Karmart Volkswagen salesman spent approximately 2 hours with the Plaintiff. Absent the Defendants' conduct the salesman would have sold 2 cars. Instead the salesman received no commissions whatsoever for his effort.

CAUSE OF ACTION – Violation of the Sherman Act 15 U.S.C. § 1:

67. Plaintiff pleads that Defendants' conduct described herein is a violation of section 1 of the Sherman Act. Reference paragraphs 1-66 as though completely reproduced herein.

68. Defendants designed, implemented and promulgated policies and practices, and conspired among themselves to eliminate the import and export of new vehicles.

69. In furtherance of this conspiracy, Defendant VWoA obtained "no export" written agreements from their United States independent dealers to restrain passive sales.

70. Defendant Dealers agreed to set up policies and practices, and enforce them, to identify potential exporters of new vehicles, and to not sell to them.

71. Defendant VWoA took measures to enforce these agreements by way of threatening to terminate the Dealers' dealerships that refused to comply.

72. These actions during the time covered by this Complaint are in violation of the Sherman Act 15 U.S.C. § 1 *et seq.* because they serve to restrain trade, restrain interbrand competition and to price fix, inflate, maintain, or stabilize the dealer invoice and therefore retail price of new Volkswagen vehicles as well as interbrand vehicles, sold in both the United States and in Canada.

73. Because of the Defendants' antitrust violations, the Plaintiff as well as each and every purchaser of a new Volkswagen vehicle or vehicle in competition with Volkswagen vehicles have suffered financial injuries. The injuries consist of paying higher prices for vehicles than they would have paid absent the Defendants' unlawful conduct.

74. Because the violations are ongoing, the Plaintiff as well as, each and every purchaser of a new Volkswagen vehicle or vehicles in competition with the Volkswagen brand vehicles, is threatened with similar injury in the future unless enjoined by this Court.

PRAYER FOR RELIEF:

75. Wherefore, Plaintiff prays for relief as follows:

a. That the vertical restraint to prevent passive sales imposed by the Defendant Dealers be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

b. That the vertical restraint to prevent the export of Volkswagen vehicles imposed by Defendant VWoA be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

c. That the alleged combination and conspiracy among the Defendants be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

d. That the Defendants have been unjustly enriched in the form of additional revenue as a result of their unlawful conduct. To order restitution; compensatory damages; punitive damages and injunctive relief, together with the cost of this suit, and any other compensation this Court deems just and proper for the injuries the Plaintiff sustained by means of Defendants' misconduct. (See filed Document 55)

76. Plaintiff pleads that if Defendants' conduct if not enjoined by this Court, both Canadian and American Consumers alike, and sales staff will continue to suffer damages.

Respectfully submitted,

Dated: The 16th of June 2008

_____s/ skye taylor

Skye Taylor (*Pro Se Litigant)*
3487 Triumph St.
Vancouver, B.C., V5K 1T9, Canada